Richard B Hull
Station WOI
Ames
Iowa

SPEECH OF CLIFFORD J. DURR BEFORE

NATIONAL CITIZENS CONFERENCE ON CIVIL LIBERTIES

Washington, D. C.
April 14, 1948

WHERE WE STAND TODAY

The world today is threatened by the aggression of a totalitarian dictatorship. But we cannot safely assume that the source of our danger lies solely in any one nation, ruler, organization, or ideology. The name of the dictator is fear.

Its techniques are subtle and insidious. It paves the way for its conquest by sowing the seeds of suspicion and distrust among its intended victims. It makes alliances with insecurity wherever it can be found. In its program of confusion it makes skillful use of the guise of patriotism and the labels of freedom and democracy, and even of religion itself. It gives excited warnings of real dangers in order to gain credence for those of its own invention. It steals the symbols of deep-seated loyalties and uses them to serve its ends.

Once it has taken over, it enforces blind obedience to its commands. It demands conformity and silences protests. It confiscates all reason and jams the minds of its subjects so that they will be incapable of receiving any ideas or information in conflict with what it has decreed to be so. It requires the surrender of moral and intellectual integrity. But it is not unmindful of the needs of its subjects. It graciously rewards their obedience by granting hatreds to them as a salve for their frustrations, and prejudices as a compensation for their sense of insecurity and inadequacy. It directs their attention upon the motes in the eyes of their neighbors lest they become too painfully aware of the beams in their own.

Fear and democracy have already embarked upon an all-out war for supremacy. The battleground is here as well as abroad. There can be no truce between them. One or the other must go down in defeat. They are too inconsistent with each other to exist side by side as equal sovereigns.

Democracy rests upon a faith in the fundamental decency and intelligence of men; fear proclaims their wickedness and stupidity. Democracy places its emphasis on the similarity of men to each other and the community of their needs, desires, hopes, and yearnings; fear emphasizes their differences. Democracy stresses neighborliness; fear stresses enmity. The way of democracy is education, free discussion, and the ballot; the way of fear is violence. Democracy feeds on confidence; fear feeds on fear. Democracy asserts the innate dignity of all men as children of a common Creator; fear denies it.

The form of government we enjoy could not have been created in an atmosphere dominated by fear. The Declaration of Independence, with its defiance of oppression and its enunciation of the "unalienable rights" of all men could not have been written by fearful authors. Fearful men could not have written into the Constitution the guarantees of freedom of speech, of the press, of religious beliefs, and of peaceable assembly. They would not have thought about the safeguards against unreasonable searches and seizures, the guarantees of due process, or any of the other protections of human rights written into the original Constitution, as well as the Bill of Rights.

The founders of our government were certainly not unmindful of the demands of national security. They had just won independence through war and were aware of the possibility that war might be necessary to preserve it. Troops of European nations were just beyond the still uncertain borders of the new nation and its frontiers were constantly harrassed by Indian tribes. Tories who had recently demonstrated their loyalty to the now alien government of England were at large. The "agents" of many foreign nations moved freely about the country, and "alien ideas" were rife. But these founders saw no inconsistency between national security and constitutional safeguards of the rights of individual citizens. Rather, they sought to build security upon the foundation of individual freedom. They reasoned, perhaps, that men enjoying the maximum of personal freedom would be the most loyal protectors of their government and their country, for they would have a stake worth protecting.

There have been times in our history when those in charge of our government have temporarily doubted the wisdon of the men who founded it. Such doubts arose before the Bill of Rights was ten years old. The ideas of the French Revolution were still very much alive and they frightened many who were in positions of financial and economic power. Napoleon's military genius and lust for conquest was being

demonstrated. War against France was advocated as a means of destroying its "alien" ideas, along with its military power. Through fear, national security was sought in the odious Alien and Sedition Acts.

In the period of economic uncertainty following World War I, fear again gained power and we sought security in repressive legislation and the infamous Palmer raids.

We have just come through the biggest and most destructive war the world has ever known. Our democratic institutions continued to function as we fought. They added to our strength and proved to be a most effective weapon against the enemy. Our nation is now physically stronger than it has ever been. Yet fear is again making us doubtful of the strength of those very institutions which have served us so well in the past.

We are seeking security in new conceptions of loyalty and in new standards for measuring it. We are frightened by new ideas and only the orthodox are deemed safe. New standards of Americanism are being laid down and new forms of punishment devised for their enforcement.

I doubt that the House Committee on Un-American Activities will show us the way to freedom and safety. I am equally doubtful that we shall find them in the "Loyalty Program" now under way in the Executive branch of our federal government, pursuant to the Executive Order of the President issued March 17, of last year.

I am quite certain that the Committee on Un-American Activities has not escaped the attention of this Conference on Civil Liberties. Because of my more immediate connection with it as a member of the Executive Branch of our government, I shall address my remarks to the Loyalty Program.

I would like to make it entirely clear that I do not speak for the agency of which I am a member. I do not purport to speak on behalf of government officers or employees generally, for I do not purport to know the views of all or even a substantial number of them. The views I shall express are entirely my own.

Under the Executive Order, all government officers and employees are to be examined to ascertain whether or not they are loyal to their government. They are to be investigated by the Federal Bureau of Investigation. Those not "clearly loyal" are to be tried before administrative boards created pursuant to the Order, and to be judged by standards which it lays down. Among these standards is the following:

> "f. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means."

If "reasonable grounds" are found to support the belief that an accused employee is disloyal, he is to be discharged from the government service.

I am convinced that the evils of the Order far outweigh any possible good that can come from it. It has within it such potentialities of injustice, oppression, and cruelty that its administration will inevitably result in the alienation rather than the promotion of the loyalty of government employees.

While the "standards" list among the tests of loyalty offences such as espionage, sabotage, treason, etc. (which are already covered by our criminal laws and with which our courts are fully competent to deal), the basic concern of the Order is with attitudes and associations rather than with wrongful behavior--with ideas, rather than with deeds.

Loyalty is a condition of the mind and emotions and, in my opinion, is too subtle a matter to measured by any such standards as those laid down in the Order, or any which are likely to be laid down under it. I do not believe that men should be officially empowered to sit in judgment on the minds and emotions, or even the associations, of other men, and to judge them by tests short of overt acts or expressions tantamount to overt acts. Lacking any such objective tests, the guide followed will inevitably be the personal opinions and tastes of the judges. Any attempt to punish men for their state of mind or to force their mental processes and conclusions by intimidation rather than to persuade them by reason is as futile as it is wrong. Ther Government may punish or reward acts; it may command obedience; but loyalty, it seems to me, has to be earned.

Even if men were given the wisdom always to know with certainty what ideas are good or bad, I doubt the efficacy of intimidation or oppression as a means of stamping out the bad. The expression of ideas may be temporarily silenced, but repression will not destroy them. The only effective weapon against bad ideas is good ideas plus the demonstration of good ideas in action.

Faithless as well as incompetent employees should, of course, be removed from their jobs, but the best test of competence and faithfulness, it seems to me, is performance on the job. The Executive Order rejects this test. Instead, it sets up a set of subjective standards by which future behavior on the job is to be anticipated. "Reasonable grounds" for "belief" that future performance may be bad, arrived at by the application of these subjective standards, cannot be overcome by a long record of good performance in the past. The verdict must turn on reasonable grounds for "belief" and not upon the preponderance of the evidence. To save his reputation and his job, the employee must eradicate all "reasonable grounds" for unfavorable belief, even though he may not know, with certainty, what the grounds are. Men are to be known, not by the fruits which they have borne, but by prognostications as to the fruits they may bear. They are to be tried, moreover, not by judges dedicated to impartiality but by men "personally responsible for an effective program to assure that disloyal officers or civilian employees are not be be retained in employment." The judges acquit at their personal peril for they, themselves, amy be brought to account for their acquittals. They are assigned the role of judges, but are accountable as prosecutors.

To require men to hazard their reputations and their means of livelihood upon a hearing before a forum so constituted and applying such standards, in my opinion, makes a mockery not only of "due process" but of elementary standards of fairness.

I am convinced that the end result of the Executive Order will be to endanger national security rather than to safeguard it. At a time when confidence in government is of vital importance, the Order tends to destroy confidence by creating fears that the government cannot be trusted because of enemies within its own ranks. By its very provisions, the Order officially expresses a lack of confidence in the vigor and effectiveness of those "democratic processes" which it declares to be "the heart and sinew of the United States". It impairs rather than promotes loyalty by departing from those principles of freedom of belief and association and of fair play which, in a democratic society are, and should be, the basis on which loyalty is founded.

It impairs the morale and, therefore, the efficiency of government employees by exposing their reputations and jobs to continuous attack by nameless accusers. It discourages, and in many instances bars, the entry into government service of men of ability, integrity, experience, and imagination, because of their inability to answer unspecific charges of unidentified informers, or their unwillingness to subject their reputations to the hazards which are now made a part of government service. It deprives the heads of government agencies and departments of effective control over their own personnel and places in the hands of the Federal Bureau of Investigation a dictatorial power over government employment policies.

It tends to force all political, economic, and social thinking into orthodox patterns at a time when new and unorthodox ideas are desperately needed to cope with new and unorthodox problems. It creates an atmosphere hostile to reason, an atmosphere in which we may be dangerously misled into rejecting information of vital importance solely because it appears to conflict with accepted beliefs as to what is so.

By giving official acceptance to rumor and protection to informers, it places in the hands of our enemies effective weapons of psychological warfare to be used against us. The role of "confidential informer" is a most convenient one for the enemy agent having the assignment of creating fear, distrust, and suspicion and undermining morale.

It treats rumor and gossip as evidence and shelters it from the test of examination. In the name of security, it raises talebearers and informers to a new level of human dignity, while denying their victims the procedural safeguards guaranteed by our Constitution to the most vicious criminals--including spies, saboteurs, and traitors. By sparing talebearers from the uncomfortable experience of meeting their victims face to face and sheltering them from that public scorn and contempt which has been their traditional lot, it has deprived us of our most effective defence against their mischief. It defies basic religious teachings by giving protection and power to a group against which we are repeatedly warned in both the Old and New Testaments.

It purports to serve our "democratic processes" by ignoring the principle that men should be deemed innocent until their guilt is proven; by denying the right of

public trial before any impartial tribunal; by withholding from those accused full information as to the nature and cause of the accusations against them; by denying to those accused the right to be confronted by their accusers; by failing to extend to them the benefit of compulsory process for obtaining witnesses in their favor; and by authorizing their conviction on unsworn testimony of unknown witnesses. It indicts men for their associations and convicts them on speculations as to their state of mind.

It vests in the Attorney General the authority, by unreviewable decree, issued on the basis of ex parte and secret investigations, to proscribe groups and organizations. It gives our secret police jurisdictions over our beliefs and associations and accepts their accusations in secret without oath or cross-examination. Such a course is as dangerous to liberty in the United States as in Germany, Japan, Italy, or Russia. We have less excuse than they for taking it. We have a different tradition and we also have the warning of their experience.

No reasonable person would suggest that the proper way to stamp out robbery in this country is to make suspects of 140,000,000 American people and examine them all for their criminal tendencies. Reason demands concentration on the immediate sources of danger. The absorption of the police in the major task would enable the real robbers to continue their robbing without great fear of molestation. Yet the Executive Order proposes just such a course with respect to government employees. More than two million of them are made "suspects" and must be examined for their "disloyal" tendencies.

The Order applies with equal force to all departments and agencies of government, regardless of their functions and responsbilities, and to all employees, regardless of the nature of their work. The typist in the Children's Bureau of the Department of Labor must meet the same test as an employee handling confidential documents in a highly "sensitive" position.

If we believe that national security is, in fact, so seriously endangered as to warrant the drastic measures proposed in the Order, then can we afford to stop our crusade for "loyalty" with the government itself? War is no longer the exclusive affair of professional armies or even of the government. Our national security hinges to as great, if not an even greater, extent upon our mines, factories, mills, and transportation and communications systems. If the "disloyal" clerk in the Fish and Wildlife Service of the Department of the Interior is a threat to security, then is not the "disloyal" worker in a steel mill or automobile factory a far greater threat?

What is to become of the "disloyal" government employee who is discharged? Is he to be turned loose as a menace to society, to find his way, under an assumed name, perhaps, to a job in an airplane plant or an oil refinery? Logic forbids such a course.

If, again, security requires the suppression of dangerous ideas, what about our broadcast stations and networks, with their continuous access to the ears and minds of the American people? What about our newspapers, with their tremendous power of molding public opinion? Can we assume that "disloyal" people have not infiltrated into their ranks? Where can we draw a line consistent with safety?

Even though the principles of the Executive Order are not officially extended beyond government, the example of government will be followed outside of government. The brand of "disloyalty" will not fade into invisibility once the employee has passed into private life. Moreover, private branding irons are already being made after the government's pattern and more will be made. Can anyone be sure that he will never feel their burn?

We are on the way to creating a new class of outcasts from society--a caste of economic and social "untouchables." This new caste will certainly threaten our security. It will also challenge our humanity. Barred from the normal occupations by which people earn their living, its members will be faced with the alternatives of hunger, an uncertain charity, or crime. Denied the companionship of the clearly "loyal", they will be driven by sheer loneliness into the society of the affirmatively disloyal. If hunger does not make them dangerous, resentment will.

The justification given by the Chairman of the Loyalty Review Board for the denial to government employees of the basic rights and procedural safeguard guaranteed by the Constitution to all others is that "legally, the government is entitled to discharge any employee for reasons which seem sufficient to the government, and without extending to such employee any hearing whatsoever." I doubt that the government's right in this respect is as free of legal limitation as the Chairman of the Loyalty Review Board contends. Even if we assume that the government may discharge it employees for reasons which are wholly arbitrary, may it discharge them for reasons

which are wholly unconstitutional? May it, for example, discharge an employee solely because of his religion, or because he has exercised his constitutional right of free speech or participated in peaceable assembly under circumstances and for purposes wholly unconnected with his job?

A finding of "disloyalty" is considerably more than a matter of hiring and firing. It is "punishment" in the truest sense of the word and, under the standards of the Order, may be punishment for activities which are entirely legal and which cannot be made illegal under our Constitution as it now stands.

But even if every action proposed by the Executive Order could be sustained in the courts, I do not think that the government should be a party to the denial of basic constituional rights on narrow legalistic grounds. On the contrary, it seems to me that it should assume leadership in promoting the spirit of the Constitution as well as preserving its letter. Certainly the federal government should not resort to the use of economic and social sanctions to accomplish results which it is forbidden to accomplish through the use of political and judicial sanctions by the very terms of the Constitution. The end result of such a trend, once set under way, is to undermine the rule of law and to substitute for responsible representative government, government by arbitrary power, limited by no rule of law, and enforcing its edicts without regard to the courts, because it uses sanctions which the courts do not recognize.

Democratic government is based upon faith in people--in their innate intelligence and decency--upon a belief in their ability to shape out a good destiny for themselves between the hammer and anvil of conflicting ideas, provided they are given full freedom to know and to discuss, to inquire and to explore, to experiment and to compare, to associate and to exchange their views one with another, and to protest when the occasion arises. This was the gamble which the founders of our government made with destiny. It was not the gamble of fearful men. It will not be won by fearful men.

Scanned from the National Association of Educational Broadcasters Records
at the Wisconsin Historical Society as part of
"Unlocking the Airwaves: Revitalizing an Early Public and Educational Radio Collection."

A collaboration among the Maryland Institute for Technology in the Humanities,
University of Wisconsin-Madison Department of Communication Arts,
and Wisconsin Historical Society.

Supported by a Humanities Collections and Reference Resources grant from
the National Endowment for the Humanities

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